

## REMARKS/ARGUMENTS

This paper is filed in response to the office action mailed in this case on December 2, 2008. Applicants request a 2-month extension of time to make this paper timely filed. Reconsideration of the application as amended in view of the remarks herein is respectfully requested.

The present amendment should be entered into the record as it does not raise any new issues and the amendments could not have been made earlier. Claim 1 is amended as discussed below to include the limitations of now cancelled claim 2 which the Examiner has already considered. Claim 1 has also been amended to clarify the phrase "forms a substantial extension" as it relates to the position of the hand control relative to the armrest. This amendment is in response to the Examiner's rejection to this claim apparently issued for the first time in the final office action and therefore Applicants herein respond for the first time. Claim 5 is amended for a clerical matter. Claim 10 is amended to clarify the location of the side surfaces relative to the palm contacting surface of the hand control in response to the Examiner's apparently new rejection. No new matter has been added by the amendment and they are fully supported by the specification as discussed below.

The Examiner has made the present office action final and cites Applicant's previously filed amendment as necessitating the finality of the present office action. Applicants submit that the finality of the present office action is in error. Applicants previously filed amendment was for clarification of the shape of the palm contacting surface of the hand control. This previously introduced limitation can be found in original claim 4. The Examiner has failed, to date, to establish a prima facie rejection of this claimed limitation and therefore against all claims of the present application. In the event that the claims of the present application require a further office action, Applicants submit that it should issue as a non-final office action.

Next, Applicants thank the Examiner for his thoughtful review of the limitations provided in the claims. Applicants submit however, with regard to the objections to the drawings and the 112, first and second, paragraph rejections, that the Examiner is unduly overreaching in his attempts to perceive deficiencies in the application. Applicants remind the Examiner that it is his job to determine the level of skill of an average artisan and to examine the application and claims from this viewpoint.

The Examiner has conveniently numbered the paragraphs and individual rejections and objections in the office action. Applicants respond below to each rejection and objection by reference to the rejection/objection paragraph number.

### **(1), (2), and (3): Objection to the drawings:**

The Examiner has objected to the drawings indicating that the limitation regarding "a planar contact surface" of the hand control is not shown in the drawings. Applicants note

however that this is not the language of the claims. Claim 1 reads that the palm contacting surface is “substantially planar” which is not the same as “planar”. Applicants submit that the figures show a substantially planar palm contacting surface which is slightly curved. Substantially planar and slightly curved are terms/phrases that are used synonymously in the art. Therefore Applicants respectfully submit that no amendment to the drawings is required.

**(5): 112 first paragraphs rejections of claims 10 and 11:**

The Examiner next indicates that the specification fails to provide a basis for the subject matter of claims 10 and 11. Applicants question the purpose of making the present rejection and again submit that the Examiner is unreasonably overreaching in an attempt to find a perceived deficiency in the language of these claims. In particular most of the Examiner’s dialog has nothing to do with the limitations introduced by these claims.

Nonetheless, Applicants have amended claim 10, for the Examiner’s clarification, to read:

10. The stairlift chair of claim 1, where the hand control further comprises side surfaces projecting downwardly from said palm contacting surface, said side surfaces configured to permit smooth contact by the side of a user's hand.

Claim 11 as previously presented reads:

11. The stairlift chair of claim 1, wherein said palm contacting surface is constructed and arranged to underlie at least 50% of the area of a user's palm.

With regard to the rejection of claim 10 the Examiner's attention is drawn to page 10 lines 8 and 9, page 10 lines 19 to 24, and to Fig. 10 of the application as filed. Here it is clearly described and shown that in certain preferred embodiments the hand control has side surfaces to provide smooth contact with the side of a user’s hand.

With regard to the rejection of claim 11 the Examiner’s attention is drawn to page 10 lines 25 to 26 as well as to Fig. 8 of the application as filed. Here it is clearly described and shown that in certain preferred embodiments the palm contacting surface of the hand control underlies at least 50% of the area of a user’s palm.

If the Examiner is to maintain a 112, first paragraph, rejection of these claims, Applicants respectfully request the Examiner to provide a detailed explanation explaining how it is that one skilled in the art would not understand the limitations of these claims when viewed in light of the entire specification and the cited sections thereof. Failing such a showing, the present rejection must be withdrawn.

**7(a): 112, second paragraph, rejection of claim 1:**

The Examiner rejects claim 1 indicating that it is not clear how the hand control forms a “substantial extension” of the armrest. Applicants again submit that the Examiner is unreasonably overreaching in his rejection of this language in claim 1. This language is widely accepted in the art. Nonetheless, Applicants have amended claim 1 to delete this language and to clarify for the Examiner the relationship between the armrest and the hand control, in other words, to permit a user's arm and hand to be supported simultaneously. This amendment is clearly supported by the specification and no new matter has been added. *See* for example Figs 1, 9 & 10.

**7(b): 112 second paragraph rejection of claim 5:**

The Examiner rejects claim 5 for a lack of antecedent basis for “said control interface”. This rejection is proper. Applicants have amended claim 5 to state “said hand control” instead. This amendment is believed to overcome the Examiner’s rejection of claim 5.

**7(c): 112 second paragraph rejection of claim 10:**

The Examiner rejects claim 10 because it is unclear as to how the embodiment with a “planar palm contacting surface” could also have side surfaces. Again, Applicants specification and claims are directed to a “substantially” planar (e.g. slightly curved) hand control. Furthermore, Applicants submit the Examiner’s rejection is incorrect as the Examiner has apparently misinterpreted the language of this claim. The Examiner may have been interpreting this claim as limiting the “palm contacting surface” as having “side surfaces”. This however is not the language of the claim.

Claim 10 instead indicates that the “hand control” further comprises “side surfaces”. Nonetheless, Applicants have amended claim 1 to further indicate that the side surfaces project downwardly from the palm contacting surface. These amendments are believed to overcome the present rejection and alleviate the Examiner’s concerns.

**7(d): 112 second paragraph rejection of claim 11:**

The Examiner indicates that the presently claimed embodiment (e.g. the palm contacting surface underlies at least 50% of the area of a user’s palm) was only discussed in the specification with regard to the embodiment where the palm contacting surface was curved. Again, Applicants specification and claims are directed to a “substantially” planar (e.g. slightly curved) hand control. Furthermore this embodiment is clearly described in the specification and shown in Figure 8 as described above. Therefore the Examiner’s rejection must be withdrawn.

## **8: The 102(b) rejections of the claims in general:**

With regard to the Examiner's rejections of claims of the application under 102(b), Applicants remind the Examiner that for a claim to be anticipated each and every limitation of that claim must be disclosed within a single prior art reference. According to MPEP section 706.02, for anticipation under 102, the cited reference must teach **every** aspect of the claimed invention either explicitly or implicitly. "Moreover, it is **incumbent upon the Examiner** to identify where in each and every facet of the claimed invention is disclosed in the applied reference." *Ex parte Levy*, 17 USPQ2d 1461, 1462 (POBAI 2003).

If the Examiner is to maintain any of the rejections based upon anticipation, Applicants request the Examiner to provide citations, by line and column number, to where in a cited reference all limitations of the considered claim can be found. Failing such a showing, the anticipation rejections must be withdrawn.

## **9: The 103(a) rejection of the claims in general:**

The Examiner rejects numerous claims of the application as obvious over a combination of references. Applicants remind the Examiner that to support an obviousness rejection, MPEP §2143.03 requires "all words of a claim to be considered" and MPEP § 2141.02 requires consideration of the "[claimed] invention and prior art as a whole." Further, the Board of Patent Appeal and Interferences recently confirmed that a proper, post-KSR obviousness determination still requires the Office make "a searching comparison of the claimed invention – including all its limitations – with the teaching of the prior art." *In re Wada and Murphy*, Appeal No. 2007-3733 (BPAI, Jan. 14, 2008), citing *In re Ochiai*, 37 USPQ2d 1127 (Fed. Cir. 1995) and *CFMT v. Yieldup Intern. Corp.*, 68 USPQ2d 1940 (Fed. Cir. 2003).

If the Examiner is to maintain any of the rejections based upon obviousness, Applicants request the Examiner to provide citations, by line and column number, to where in the cited references all limitations of the considered claim can be found. Furthermore, Applicants request the Examiner to provide a detailed statement of clear reasoning as to why one skilled in the art would have arrived at the combination of references. Failing such showings, the obviousness rejections must be withdrawn.

## **10: 102(b) rejection of claim 1:**

The Examiner rejects claim 1 under 102(b) in view of Decelles. The Examiner however incorrectly indicates button 68 (in Fig. 17) is equivalent to the hand control of the present claim. If button 68 is deemed to be a 'hand control' within the meaning of claim 1, then it is not angled upwardly out of a plane defined by the upper surface of the armrest as is required by the claim. Button 68 clearly lies below the plane defined by the upper surface of the armrest.

Further, Decelles does not show button 68 as having a palm contacting surface. Quite to the contrary, Decelles' Fig. 17 indicates button 68 being operated by the tip of a user's finger. There is nothing in Decelles to suggest that the user's palm could be engaged with the button 68 while the arm was simultaneously resting on the armrest.

Applicants also note that they have amended claim 1 with the limitation of claim 2. Button 68 is clearly not displaceable about a substantially vertical pivot axis. If the Examiner is to maintain a 102(b) anticipation rejection of this claim in view of Decelles, Applicants respectfully request the Examiner to indicate where by column and line number all limitations of the claim may be found. Failing such a showing applicants submit that this claim and dependent claims based thereon are in form for allowance.

**11: 102(b) rejection of claim 1:**

The Examiner also rejects claim 1 under 102(b) in view of Ooms. However, the hand control shown in Ooms does not have a substantially planar palm contacting surface and it is not displaceable about a substantially vertical pivot axis. The present invention was developed, in part, to avoid the high point loadings which can be imposed on a user's hand by controls of the type shown in Ooms, particularly when getting onto, and off, the stairlift.

**12: 102(b) rejection of claims 1, 4, and 10:**

The Examiner rejects claim 1, 4, and 10 under 102(b) in view of Watkins. Applicants submit that the Examiner's interpretation of this citation is clearly incorrect. Push buttons 30 are not described as being displaceable to effect movement of the vehicle. Joystick 16 is clearly provided for this purpose.

Assuming *arguendo* that the Examiner were correct, it is clear that the buttons are not palm contacting members and do not pivot about substantially vertical pivot axes to effect movement of the stairlift as such limitations are required by these claims. Therefore the Examiner's rejection must be withdrawn.

**13: 102(b) rejection of claims 12 and 13:**

The Examiner rejects claims 12 and 13 under 102(b) in view of Tasker. Claim 12 recites that the hand control (which effects movement of the stairlift by displacement relative to the armrest) must be formed in two parts which together are displaceable with respect to the armrest yet, themselves, are displaceable with respect to one another. In Tasker, the hand control is formed as a single component which clearly does not fall within claim 12 (or claim 13). Therefore the Examiner's rejection must be withdrawn.

**14: 102(b) rejection of claims 12 and 13:**

The Examiner also rejects claims 12 and 13 under 102(b) in view of Voves. The Examiner's interpretation of Voves is simply incorrect. While the Examiner correctly identifies one of control switches 170 as being the hand control, each switch 170 is clearly a single entity. Present claim 12 clearly recites that the hand control is formed in two parts as described above. Claim 12 is clearly not anticipated by Voves therefore this rejection must be withdrawn.

**15: 103(a) rejection of claim 2:**

The Examiner cites Ooms (discussed above) and Altorf and rejects claim 2 as obvious over the combination. Applicants have amended claim 1 to include the limitations of claim 2 and have canceled claim 2. It could be the case that the Examiner's rejection of claim 2 could now be applied to claim 1.

In this case, in addition to the above discussion of Ooms, Applicants note that the Examiner argues that Altorf shows a stairlift chair with an armrest 11 which pivots about a vertical axis 14. However, it is clear that Altorf's pivot axis 14 is a horizontal and not a vertical axis. Further, any displacement of the armrest 11 about the axis 14 does not effect displacement of the stairlift. The Examiner's arguments simply don't relate to the language of claim 1. This rejection must therefore be withdrawn.

**16: 103(a) rejection of claim 2:**

The Examiner cites Watkins (discussed above) and Altorf and also rejects claim 2 as obvious over the combination. Again, Applicants have amended claim 1 to include the limitations of claim 2 and have canceled claim 2. It could be the case that the Examiner's rejection of claim 2 could now be applied to claim 1.

In this case, in addition to the above discussion of Watkins, the same arguments provided above with respect to Altorf apply. Altorf's pivot axis 14 is a horizontal and not a vertical axis as is required by the claims. Further, any displacement of the armrest 11 about the axis 14 does not effect displacement of the stairlift. This rejection must therefore be withdrawn.

**17 and 18: 103(a) rejection of claim 5:**

Applicants submit that claim 5 is dependent upon a patentable base claim (e.g. claim 1). Once claim 1 is found to be allowable, so too should claim 5.

**19: 103(a) rejection of claim 7:**

Applicants submit that claim 7 is dependent upon a patentable base claim (e.g. claim 1). Once claim 1 is found to be allowable, so too should claim 5. Furthermore, Watkins simply shows optional control buttons in the same way as does Voves. Watkins does not disclose that

one of those buttons could be formed in two parts, which two parts, when displaced relative to one another, could effect a different control function.

**20 and 21: 103(a) rejection of claim 11:**

Applicants submit that claim 11 is dependent upon a patentable base claim (e.g. claim 1). Once claim 1 is found to be allowable, so too should claim 11.

**22 and 23: 103(a) rejection of claim 15:**

Applicants submit that claim 15 is dependent upon a patentable base claim (e.g. claim 1). Once claim 1 is found to be allowable, so too should claim 15.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marina T. Larson", written over a horizontal line.

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